IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4190 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G. S. R. T.

Versus

KANTILAL MOHANLAL BAMANIYA

Appearance:

1. Special Civil Application No. 4190 of 1989

MR MANISH UPADHYAY for MR PRANAV G DESAI for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 08/05/2003

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation - the petitioner herein, has challenged the legality and

propriety of the order at Annexure.A passed by the Assistant Labour Commissioner, Surat in Approval Application No. 135 of 1987 under Section 33(2) of the Industrial Disputes Act.

2. The respondent, at the relevant time, was working as a Junior Clerk in the Workshop at Surat Division of the petitioner Corporation. It is alleged by the petitioner that the respondent was in habit of remaining absent without prior permission of the authority or without getting his leave sanctioned. It is the case of the petitioner that this hampers the administration of the Workshop and it is difficult to replace the concerned Clerk by providing substitute. Inspite of giving number of opportunities to the respondent to improve, according to the petitioner, the respondent had proceeded on leave on 21.4.1986 to 25.6.1986 by giving social reasons and sickness. It appears that he had extended leave on several occasions on the ground of sickness, upto December 1986 by giving various applications. Even though the petitioner Corporation had sent a Registered letter asking him to resume duty, he had not reported for duty and on the contrary, made leave application on medical ground. Thus, according to the petitioner, the respondent remained on unauthorised leave without any prior sanction from his superior and thereby he has committed breach of service conditions. Accordingly, a chargesheet was issued to the respondent on 26.12.1986. The respondent submitted his reply on 2.1.1987 to the said charge sheet. However, as his reply was not found satisfactory, the petitioner Corporation held a departmental inquiry against the respondent. After completion of the inquiry, it was found that the charges levelled against the respondent were proved and therefore, vide order dated 31.8.1987, the petitioner Corporation dismissed him from service.

3. The petitioner filed an approval application before the Commissioner of Labour, at Surat under Section 33(2) of the Act for confirming the order of dismissal passed by the petitioner Corporation against the respondent. The Assistant Labour Commissioner, after hearing the parties, vide order dated 9.1.1989 rejected the said application and not confirmed the action of dismissal passed by the petitioner against the respondent. The said order is under challenge in this petition.

4. I have enquired from the learned Counsel appearing for the parties as to whether there is any possibility of settlement in the matter. This is

particularly in view of the fact that the respondent has been dismissed on the ground that he remained on unauthorised leave, while it is the case of the respondent that he was in fact sick and therefore, he had applied for leave on medical ground. Whether the petitioner was justified in terminating the services of the respondent and whether the respondent was in fact medically unfit, the fact remains that the services of the respondent have been terminated on the ground of absenteeism. I have been told that this matter was listed before the Lok Adalat, but no settlement was arrived at for any reason.

5. Learned Counsel for the respondent has suggested that the respondent is willing to resume duty without claiming any backwages for the period, i.e. between the date of his dismissal till the date and he assures that, in future, he will not indulge in the misconduct of remaining absent from duty. Learned Counsel for the petitioner Corporation, having accepted the suggestion of the Court, namely, not to invite orders about the legality and propriety of the impugned order, has further accepted to reinstate the respondent without giving any monetary benefits during the interregnum period. In view of the above happy development in the matter, without entering into the merits of the case, this petition is disposed of by the following order:

The petitioner shall reinstate the respondent to his original post within four weeks from the date of receipt of this order. The respondent shall not be entitled to receive any backwages except continuity of service and the respondent shall give in writing to the petitioner Corporation that, in future, he shall not commit similar misconduct of remaining absent from duty, except for genuine reasons, without prior sanctioning of leave. Rule is discharged. No order as to costs.

(Kshitij R. Vyas, J.)

Sreeram.